



September 19, 2002

Ms. Marie D. Ziauddin
Staff Attorney
Dallas Housing Authority
3939 North Hampton Road
Dallas, Texas 75212

OR2002-5290

Dear Ms. Ziauddin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168902.

The Dallas Housing Authority (the "authority") received a request for seven categories of information relating to the requestor's termination. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments submitted by the requestor's attorney. *See* Gov't Code § 552.304 (providing for submission of public comments).

We first note that you have not submitted to this office a portion of the requested information, a copy of the transcript recording of the grievance hearing. You indicate that the authority does not prepare transcripts of the hearings. The Act does not require the authority to do so. *See* Open Records Decision Nos. 452 at 2-3 (1986) (document is not within the purview of the Act if, when a governmental body receives a request for it, it does not exist), 342 at 3 (1982) (Act applies only to information in existence, and does not require the governmental body to prepare new information). However, you state that the authority has copied the tape recording of the hearing and would be happy to send the copies upon request. *See* Gov't Code § 552.221(a); Open Records Decision No. 665 at 4 (2000) (concerning prompt production of requested information).

We turn now to your argument under section 552.103. Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The authority has the burden of providing

relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The authority must meet both prongs of this test for information to be excepted under section 552.103(a).

In this case, you state that you received the request for information on July 5, 2002. However, you also inform this office that the authority was not served with the requestor's citation and petition until July 17, 2002. You do not indicate that litigation was otherwise reasonably anticipated by the authority on the date the authority received the request for information. Consequently, we find that the authority may not withhold from required public disclosure the requested information under section 552.103. See Gov't Code § 552.301(e)(1)(A); *Univ. of Tex. Law Sch.*, 958 S.W.2d at 481; *Heard*, 684 S.W.2d at 212; ORD 551 at 4. As you raise no other exception to the disclosure of the submitted information, the authority must release it to the requestor, with the following exceptions.

A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).¹ See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* We have no basis for concluding that the social security number in the responsive records is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the authority pursuant to any provision of law enacted on or after October 1, 1990.²

¹ Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that other statutes makes confidential.

² Some of the submitted documents contain confidential information that is not subject to release to the general public. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the authority receives a further request for this information from an individual other than the requestor or her authorized representative, the authority should again seek our decision.

In summary, the authority must withhold the marked social security number from disclosure if it was obtained or is maintained by the authority pursuant to any law enacted after October 1, 1990. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 168902

Enc: Submitted documents

c: Ms. Sharon Curtis
11611 Ferguson, #115
Dallas, Texas 75228
(w/o enclosures)